

WC 07-258

REDACTED VERSION - PUBLIC DISCLOSURE PERMITTED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Petition of the Embarras Local Operating
Companies For Forbearance Pursuant to 47
U.S.C. § 160(e) from the Contract Tariff
Filing Requirements of the Pricing
Flexibility Rules

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WC Docket No. 07-_____

FILED/ACCEPTED

OCT 19 2007

Federal Communications Commission
Office of the Secretary

PETITION OF THE
EMBARQ LOCAL OPERATING COMPANIES
FOR
FORBEARANCE PURSUANT TO 47 U.S.C. § 160(C)
FROM
CONTRACT TARIFF FILING REQUIREMENTS

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October 19, 2007

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of the Embarq Local Operating)	
Companies for Forbearance from or,)	WC Docket No. 07-___
Alternatively, Waiver of the Contract Tariff)	
Filing Requirements in the Commission's)	
Pricing Flexibility Rules)	

**EMBARQ'S PETITION FOR FORBEARANCE FROM THE CONTACT
TARIFF FILING REQUIREMENTS IN THE PRICING FLEXIBILITY RULES**

I. INTRODUCTION AND SUMMARY

The requirement that telecommunications providers file tariffs was intended to protect customers by ensuring that they have the ability to see what other customers are paying and, thereby, receive assurance that they are not facing pricing discrimination. In competitive markets, this protection is no longer necessary and, indeed, the filing requirement can affirmatively harm competition and customers when it is applied to contract tariffs. The Commission's pricing flexibility rules require the Embarq Local Operating Companies¹ ("Embarq") to file publicly file their contract tariffs in areas where Embarq has received pricing flexibility. This requirement provides Embarq's rivals with competitive advantages and also signals what price and terms they should offer in order to maximize their profits while still beating Embarq's price and terms, which has the effect of creating an artificial "price floor." This price floor harms customers by depriving them of the benefits of full and fair competition.

¹ The Embarq Local Operating Companies are listed in Embarq's federal tariffs. A copy of this list is included as Attachment A.

Embarq has experienced the competitive harm posed by the Commission's rules requiring ILECs to publicly filed contract tariffs in competitive markets. Pricing flexibility is granted where the Commission has found substantial competition that does not rely on the ILEC network, and Embarq faces substantial competition in many markets. As the Commission has found in other contexts, the competition for price cap special access services that are subject to pricing flexibility is so robust that a contract tariff filing requirement is not necessary to ensure just and reasonable prices or protect competition. To the contrary, the Commission should forbear from enforcing this requirement because the public interest, competition, and customers will be better served without it.

Accordingly, pursuant to 47 U.S.C. § 160(c), Embarq respectfully requests that the Commission exercise its statutory authority to forbear from applying the its rules to require Embarq to file contract tariffs in areas where Embarq has or may receive Phase I or Phase II pricing flexibility.² Specifically, Embarq petitions the Commission to forbear from the application of the contract tariff filing requirements contained in the pricing flexibility rules, specifically 47 C.F.R. § 69.727(a), 47 C.F.R. § 61.58, and 47 C.F.R. § 61.55.

II. PUBLICLY FILING CONTRACT TARIFFS HARMS COMPETITION AND CONSUMERS

Pricing flexibility was adopted as a pro-competitive measure, designing to foster even more robust competition where competitive entry had already occurred, by allowing price cap ILECs some flexibility to design customer specific pricing. As the Commission held in the

Pricing Flexibility Order:

² Embarq has Phase I pricing flexibility in 9 Metropolitan Statistical Areas (MSAs), and Phase II pricing flexibility in 10 additional MSAs. A list of these MSAs is attached to this Petition as Attachment B.

... we revise the rules that govern the provision of interstate access services by those incumbent local exchange carriers (ILECs) subject to price cap regulation (collectively, “price cap LECs”) to advance the pro-competitive, de-regulatory national policies embodied in the Telecommunications Act of 1996 (1996 Act). With these revisions, we continue the process the Commission began in 1997, with the *Access Reform First Report and Order*, to reform regulation of interstate access charges in order to accelerate the development of competition in all telecommunications markets and to ensure that our own regulations do not unduly interfere with the operation of these markets as competition develops.³

Tariff regulation serves a specific purpose—to protect customers in a monopoly environment—and tariff regulation, specifically the tariff filing requirement, is unnecessary in a competitive market. To this point, the Commission recently wrote that:

The Commission has recognized that tariffs originally were required to protect consumers from unjust, unreasonable, and discriminatory rates in a virtually monopolistic market, and that they become unnecessary in a marketplace where the provider faces significant competitive pressure.⁴

As time has passed, and competition flourished, it is clear that in fact the Commission’s pricing flexibility rules are no longer accelerating the development of competition, but to the contrary are interfering with the operation of this market. The problem stems from the Phase I pricing flexibility requirements that ILECs must publicly file contract tariffs.

³ *Access Charge Reform; Price Cap Performance ‘Review for Local Exchange Carriers; Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers; Petition of U S West Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA, Fifth Report & Order and Further Notice of Proposed Rulemaking*, 14 FCC Rcd 14221 ¶ 1 (1999) (citations omitted) (“Pricing Flexibility Order”).

⁴ *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services; Petition of BellSouth Corporation for Forbearance Under Section 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services*, Memorandum Opinion and Order, FCC 07-180 at ¶ 30 (rel. Oct. 12, 2007) (“AT&T Broadband Forbearance Order”).

A contract tariff is a tariff based on an individually-negotiated service contract. ... In order to comply with the nondiscrimination provisions of the Act, the Commission has required carriers to make all contract tariffs “generally available to similarly situated customers under substantially similar circumstance.”⁵

Consequently, the Commission also required that all pricing flexibility contract tariffs be publicly filed, and promulgated this requirement as 47 C.F.R. § 61.58. In the absence of competition, the filing requirement may protect customers by giving them assurance that other customers are being treated in a similar fashion and, thereby, protect against discrimination.

As competition and the number of competitors increase in a market, however, the imposition of a contract tariff filing requirement imposed only on the formerly dominant carrier not only unfairly burdens that carrier, it also begins to harm competition. Eliminating this requirement, as the Commission found with regard to tariffs and other Title II requirements for broadband special access services in the *ACS Forbearance Order*, will actually foster more competition.

We find that eliminating these requirements would make ACS a more effective competitor for these services, which in turn we anticipate will increase even further the amount of competition in the marketplace, thus helping ensure that the rates and practices for these services overall are just, reasonable, and not unjustly or unreasonably discriminatory. Forbearance from dominant carrier regulation will permit customers to take advantage of a more market-based environment for these highly-specialized services and allow petitioners the flexibility necessary to respond to dynamic price and service changes often associated with the competitive bidding process.⁶

In markets where the Commission has found competition, therefore, a requirement that the ILEC must file its contract tariffs does not aid competition, but rather it hinders it.

⁵ *Pricing Flexibility Order* at ¶ 69 n.185.

⁶ *Id.* at ¶ 107.

In economic terms, a contract tariff filing requirement creates a market failure because the market is distorted by government-imposed information asymmetry. Information asymmetry distorts markets and produces sub-optimal outcomes by interfering with the smooth functioning of prices-as-signals.⁷ When the ILEC is required to file a tariff the effect is to publicly signal its price to all customers and competitors. If other carriers are not required to publish tariffs, the signals only move in one direction. The impact of this market failure is two-fold; it affects both carriers and customers. First, it creates competitive distortions among carriers by imposing search costs on one set of carriers that are not imposed on others.⁸ Second, it denies customers the competitive benefits that would be produced by leveling the playing field with regard to the flow of information in the market.

For example, the contract tariffs filed by Embarq in pricing flexibility markets set the standard to which all other competitors look to set their own price and service terms. Once the marketplace knows Embarq's price, terms, and conditions for a specific product, the other telecommunications providers know exactly what price they have to meet for their similar products in order to be competitive. They lose any incentive to compete innovatively, and instead they use the price floor established by Embarq to meet or just beat Embarq's offering. Over time consumers are deprived of the opportunity to buy telecom services in an aggressively competitive market, and instead they find an increasingly restrictive market where prices start to pinch near the price points established by the dominant carrier that are filed with the Commission.

⁷ See, e.g., N. Gregory Mankiw, *Principle of Economics*, Thomson South-Western Publishing (2004).

⁸ Search costs are the costs of acquiring information, in this case information about competitors' prices.

The Commission recognized the problems with publicly filed tariffs in the *Long Distance Detariffing Order*.⁹ Such a requirement facilitates price coordination rather than price competition. While that order pertained to nondominant carriers, the logic and rationale supporting the order apply equally where competition is rampant, as it is for special access services in pricing flexibility markets.

Moreover, we find that tariff filings by nondominant interexchange carriers for interstate, domestic, interexchange services may facilitate, rather than deter, price coordination, because under a tariffing regime, all rate and service information is collected in one, central location. Therefore, we believe that complete detariffing, along with additional, competitive, facilities-based entry into the interstate, domestic, interexchange market, will help deter attempts to increase rates for interstate, domestic, interexchange services through tacit price coordination.¹⁰

The competitive harm from the contract tariff filing requirement is so great that, arguably, it would violate the antitrust laws were it not affirmatively required by Commission rule. It has long been recognized that exchanges of price information between competitors can have anticompetitive effects.¹¹ This is particularly true in concentrated industries, which is true for telecommunications. While price announcements and other exchanges of price information do not violate the antitrust laws *per se* and often can be legal depending on other circumstances, the courts have consistently recognized that sharing price information among competitors can tend to lessen price competition.¹² The Commission's contract tariff filing requirements serve no

⁹ *Policy and Rules Concerning the Interstate, Interexchange marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended*, Second Report & Order, 11 FCC Rcd 20730 (1996) ("*Long Distance Detariffing Order*").

¹⁰ *Id.* at 20744.

¹¹ *See, e.g., United States v. Container Corp.*, 393 U.S. 333, 337-38 (1969); *Petroleum Prods. Antitrust Litig.*, 906 F.2d 432, 445-50 (9th Cir. 1990), *cert. denied*, 500 U.S. 959 (1991).

¹² *See, e.g., Section of Antitrust Law, American Bar Association, Antitrust Law*

useful purpose, however, in competitive markets. Consequently, the Commission should not forbear from these requirements rather than allow them to lessen price competition.

III. PRICING FLEXIBILITY MARKETS ARE SUBJECT TO ROBUST COMPETITION, MAKING CONTRACT TARIFF FILING REQUIREMENTS UNECESSARY AND HARMFUL

Embarq has received pricing flexibility in a number of markets, and Embarq faces substantial competition in those markets.¹³ A grant of pricing flexibility recognizes that that market has significant facilities-based competition that should produce pricing competition and innovation.

To obtain Phase I regulatory relief, the incumbent must show that competitors have made irreversible investments in the facilities needed to provide the services at issue, thus discouraging incumbent LECs from successfully pursuing exclusionary strategies. Phase I permits LECs to offer contract tariffs and volume and term discounts, while requiring them to maintain their generally available price cap-constrained tariffed rates, thus protecting those customers that lack competitive alternatives. To obtain Phase II relief, which allows LECs to raise and lower rates, the incumbent must demonstrate that competitors have established a significant market presence in the provision of the services at issue. Under those market conditions, the availability of alternative providers will ensure that rates are just and reasonable. The triggers we adopt below should permit incumbent LECs to make the required showings, with a minimum of administrative burden for the industry and the Commission.¹⁴ [Citations omitted.]

Developments (Fourth) 89-94 (1997).

¹³ Indeed, Embarq faces substantial competition in other areas where it has yet to receive pricing flexibility because the Commission's test misses the mark. The current collocation-based triggers miss the presence of cable companies, fixed wireless providers, or other providers that do not rely on collocation to serve the area. Such competitors are growing in number and market share.

¹⁴ *Pricing Flexibility Order*, at ¶ 69 (citations omitted).

Although the pricing flexibility triggers demonstrate significant facilities-based competition, in many pricing flexibility markets the triggers actually understate the degree of facilities based competition.

As Embarq demonstrated in its Comments in the pending *Special Access Proceeding*,¹⁵ the triggers are under-inclusive, failing to recognize the significant degree of facilities-based competitors, such as the incumbent cable providers, that do not require collocation from the ILECs. Even in adopting the *Pricing Flexibility Order* in 1999, the Commission acknowledged that this might be a problem:

We recognize, however, that evidence of collocation may underestimate the extent of competitive facilities within a wire center, because it fails to account for the presence of competitors that do not use collocation and have wholly bypassed incumbent LEC facilities.¹⁶

This underestimation problem is even greater today than it was when recognized by the Commission in 1999. Since 1999 cable companies and other inter-modal competitors that have no need for collocation, such as fixed wireless, have increasingly entered the market, replacing the ILEC traditional special access services.

Specific information about competitive carriers is difficult, if not impossible to come by. These competitors are not required to file the same data with the Commission as ILECs are nor are they required to publicly file their customer contracts. And, they rarely divulge competitive information to Embarq. However, through discussions with customers, Embarq has learned of

¹⁵ Comments of Embarq, *Special Access Rates for Price Cap Local Exchange Carriers AT&T Corp. Petition for Rulemaking To Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25 and RM 10593, (filed August 8, 2007).

¹⁶ *Pricing Flexibility Order* at ¶ 95.

some, although certainly not all, special access and broadband opportunities that Embarq has lost over the past two years to competitive carriers, including in some instances to the incumbent cable companies.¹⁷ The lost opportunities include large wireless and wireline customers in many of the markets where Embarq has pricing flexibility.

Additionally, Embarq submits Attachment D which, on a wire center basis, is an estimate of special access lines at risk of being lost to a competitor in pricing flexibility markets. The estimate is based on publicly available information regarding competitors that provide wholesale special access services. For instance, Column I – “Wire centers with Cable competitor (wholesale)” only reflects cable companies that Embarq knows from public information actually provide wholesale special access service. Thus, the estimate most likely errs on the low side. As noted above, competitors providing special access service do not, unlike the ILECs, have to publicly file such information and rarely share such information directly with Embarq. Therefore, it is more likely than not that there are more competitors than what Embarq knows of. The estimates of DS1 equivalent special access lines subject to competition is based on a snapshot of access services sold in a wire center in a given month. The snapshot is converted to a DS1 equivalent for purposes of the estimate. As Column S – “Special Access Lines at Risk” shows, even this understated estimate reflects significant competition throughout most of Embarq’s wire centers. This analysis shows that []% of Embarq’s special access lines are in wire centers where there is at least one collocator or a cable company that competes with Embarq for special access services. Of those []% are in areas where Embarq has pricing flexibility.

¹⁷ See Declaration of Michael Jewell, attached hereto as Attachment C and incorporated herein. Due to customer proprietary concerns, the names of the individual customers have been removed. This Attachment is a copy of the Declaration filed in WC Docket No. 05-25.

**IV. THE SECTION 10 CRITERIA FOR FORBEARANCE ARE MET WITH
RESPECT TO CONTRACT TARIFF FILING IN COMPETITIVE MARKETS**

In order to grant forbearance, the Commission must find that: (1) enforcing the regulation is not necessary to ensure that the charges, practices, classifications or regulation are just and reasonable and are not unjustly or unreasonably discriminatory, (2) enforcement of the regulation is not necessary for the protection of consumers, and (3) forbearance is consistent with the public interest.¹⁸

**A. Enforcing The Regulation Is Not Necessary To Ensure That The
Charges, Practices, Classifications Or Regulation Are Just And
Reasonable And Are Not Unjustly Or Unreasonably Discriminatory.**

The Commission has already determined that tariff filing requirements are not necessary, in competitive markets, to ensure that charges, practices, classifications and regulation are not unjustly or unreasonably discriminatory. As the Commission recognized in granting ACS forbearance from dominant carrier regulation for broadband special access services:

In particular, mandating the ACS, but not its nondominant competitors, comply with requirements that directly limit the ability of customers to secure the most flexible service arrangements for the ACS-specified broadband services is unnecessary to prevent unjust, unreasonable, or unjustly or unreasonably discriminatory rates, terms, and conditions for these services.¹⁹

The same holds true here, perhaps even more so. Competition between providers in markets with pricing flexibility surely will better protect customers from unjust, unreasonable, or

¹⁸ 47 U.S.C. § 160(c).

¹⁹ *ACS Forbearance Order* at ¶ 94; *see also Long Distance Detariffing Order* at ¶ 37 (“We also adopt the tentative conclusion that in the interstate, domestic, interexchange market, requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services may harm consumers by impeding the development of vigorous competition, which could lead to higher rates.”)

discriminatory rates. In fact, competition will protect customers more effectively than it can today because eliminating the contract tariff filing requirement will facilitate more aggressive competition based on prices terms and conditions that are not signaled to competitors.

**B. Enforcement of the Regulation is Not Necessary
for the Protection of Consumers.**

Requiring ILECs to publicly file Contract Tariffs for special access services where competition is robust, as in pricing flexibility markets, harms rather than protects consumers. It prevents them from receiving the full benefits of a regulation-free market where competition, not regulation, drives prices. Additionally, as the Commission has previously recognized, it has tools other than tariff to protect consumers. In the particular decision below, *Long Distance Detariffing Order*, the Commission was focused on nondominant interexchange carriers. However, the impact of the Section 208 complaint process is equally applicable where there is a dominant carrier in a market and where robust competition from facilities-based carriers exists.

The commission concluded that market forces, together with the Section 208 complaint process and the Commission's ability to reimpose tariff-filing and facilities authorization requirements, were sufficient to protect the public interest with respect to nondominant interexchange carriers subject to forbearance.

...

Moreover, we find that tariff filings by nondominant interexchange carriers for interstate, domestic, interexchange services may facilitate, rather than deter, price coordination, because under a tariff regime, all rate and service information is collect in one, central location. Therefore, we believe that complete detariffing, along with additional, competitive, facilities-based entry into the interstate domestic, interexchange market, will help deter attempts to increase rates for interstate, domestic, interexchange services through tacit price coordination.²⁰

²⁰ *Long Distance Detariffing Order* at ¶¶ 9, 23 (citations omitted).

C. Forbearance in Consistent with the Public Interest

In explaining the forbearance public interest test in the *ACS Forbearance Order* the Commission recognized that the promotion of competition could be the basis for a determination that forbearance is in the public interest:

Section 10(a)(3) of the Act requires us to determine whether forbearance from dominant carrier regulation for ACS's existing and future broadband service offerings in Anchorage is consistent with the public interest. In making this determination, section 10(b) of the Act directs us to consider whether forbearance from enforcing the provisions at issue will promote competitive market conditions, including the extent to which forbearance will enhance competition among providers of telecommunications services. If we determine that forbearance will promote competition among providers of telecommunications services, that determination may be a basis for finding that forbearance is in the public interest.²¹

In the instant case, forbearance from the public filing of Contract Tariffs will promote competition. As noted above, the public filing of contract tariffs in a highly competitive pricing flexibility special access markets actually constrains price competition preventing consumers from the full benefits that should be derived given the significant competition. The constraint on price competition and competition in general from filing information publicly was recognized by the Commission in the *ACS Forbearance Order* in regard to the public interest test for forbearance over broadband special access services.

We agree with ACS that a deregulatory approach for its provision of the existing ACS-specified broadband services will serve the public interest by eliminating the market distortions that asymmetrical regulation of these services causes. In particular, we find that dominant carrier regulation impedes ACS's efforts to compete effectively with nondominant providers of these services.

²¹ *ACS Forbearance Order* at ¶ 116 (citations omitted).

.... In particular, dominant carrier regulation of the existing ACS-specified broadband services makes it unnecessarily difficult for ACS to negotiate arrangements tailored to the needs of its enterprise customers, because its tariff filings necessarily provide competitors with notice of their pricing strategies and competitive innovations.²²

Likewise, the Commission reached a similar conclusion about the anti-competitive effects of publicly filed contracts in the *Long Distance Detariffing Order*.

The record in this proceeding supports our tentative conclusion that not permitting nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services will promote competition in the market for such exchange carriers to file tariffs for interstate, domestic, interexchange services impedes vigorous competition in the market for such services by: (1) removing incentives for competitive price discounting; (2) reducing or taking away carriers' ability to make rapid, efficient responses to changes in demand and cost; (3) imposing costs on carriers that attempt to make new offerings; and (4) preventing consumers from seeking out or obtaining service arrangements specially tailored to their needs. Moreover, we believe that tacit coordination of prices for interstate, domestic, interexchange services, to the extent it exists, will be more difficult if we eliminate tariffs, because price and service information about such services provided by nondominant interexchange carriers would no longer be collected and available in one central location.

Forbearance from the rule requiring contract tariffs to be filed publicly is in the public interest because it will foster competition by eliminating the market distortions resulting from requiring one carrier in the market provide advance of its prices and innovations to the other competing carriers.

²² *Id.* at ¶ 117 (citations omitted).

V. CONCLUSION

The Commission's pricing flexibility rules require Embarq to file publicly file its contract tariffs in areas where Embarq has received pricing flexibility. This requirement provides Embarq's rivals with competitive advantages and harms customers by depriving them of the benefits of full and fair competition. Pursuant to 47 U.S.C. § 160(c), Embarq respectfully requests that the Commission exercise its statutory authority to forbear from applying the its rules to require Embarq to file contract tariffs in areas where Embarq has or may receive Phase I or Phase II pricing flexibility.

Respectfully submitted,

EMBARQ

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October 19, 2007

ATTACHMENT A

The following are the Embarq Local Operating Companies that collectively file Embarq's
FCC Tariff Number 1.

**Carolina Telephone and Telegraph Company
Central Telephone Company – North Carolina**
14111 Capital Boulevard
Wake Forest, North Carolina 27587-5900
For the state of North Carolina

Central Telephone Company – Nevada
330 South Valley View Boulevard
Las Vegas, Nevada 89152
For the state of Nevada

**Central Telephone Company of Texas
United Telephone Company of Texas, Inc.**
5454 West 110th Street
Overland Park, Kansas 66211
For the state of Texas

Central Telephone Company of Virginia
14111 Capital Boulevard
Wake Forest, North Carolina 27587-5900
For the state of Virginia

Embarq Florida, Inc.
1313 Blairstone Road
Tallahassee, Florida 32301-3040
For the state of Florida

Embarq Minnesota, Inc.
5454 West 110 Street
Overland Park, Kansas 66211
For the state of Minnesota

Embarq Missouri, Inc.
5454 West 110th Street
Overland Park, Kansas 66211
For the states of Kansas and Missouri

The United Telephone Company of Pennsylvania
240 North 3rd Street
Harrisburg, Pennsylvania 17101-1521
For the state of Pennsylvania

United Telephone-Southeast, Inc.
14111 Capital Boulevard
Wake Forest, North Carolina 27587-5900
For the states of Tennessee and Virginia

United Telephone Company of Eastern Kansas
United Telephone Company of Kansas
United Telephone Company of Southcentral Kansas
United Telephone Company of Southeast Kansas
5454 West 110th Street
Overland Park, Kansas 66211
For the state of Kansas

United Telephone Company of the Carolinas
14111 Capital Boulevard
Wake Forest, North Carolina 27587-5900
For the state of South Carolina

United Telephone Company of Indiana, Inc.
665 Lexington Avenue
Mansfield, Ohio 44907
For the state of Indiana

United Telephone Company of New Jersey, Inc.
240 North 3rd Street
Harrisburg, Pennsylvania 17101-1521
For the state of New Jersey

United Telephone Company of Ohio
665 Lexington Avenue
Mansfield, Ohio 44907
For the state of Ohio

United Telephone Company of the Northwest
902 Wasco Street
Hood River, Oregon 97031
For the states of Oregon and Washington

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United Telephone Company of the West
5454 West 110th Street
Overland Park, Kansas 66211
For the states of Nebraska and Wyoming

ATTACHMENT B

Embarq has Phase I and Phase II pricing flexibility in the following Metropolitan Statistical Areas (MSAs).

PHASE I

1. Fort Myers – Cape Coral, Florida
2. Fort Walton Beach – Crestview, Florida
3. Ocala, Florida
4. Middlesex – Somerset – Hunterdon, New Jersey
5. Mansfield, Ohio
6. Harrisburg, Pennsylvania
7. Pittsburgh, Pennsylvania
8. Johnson City – Kingsport – Bristol, Tennessee
9. Dallas, Texas

PHASE II

1. Orlando, Florida
2. Tallahassee, Florida
3. Las Vegas, Nevada
4. Fayetteville, North Carolina
5. Greenville, North Carolina
6. Hickory, North Carolina
7. Rocky Mount, North Carolina
8. Lima, Ohio
9. York, Pennsylvania
10. Charlottesville, Virginia

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ATTACHMENT C

DECLARATION OF MIKE JEWELL

**Before the Federal Communications Commission
Washington, D.C. 20554**

In the matter of)	
)	
Special Access Rates for Price Cap)	WC Docket No. 05-25
Local Exchange Carriers)	
)	
AT&T Corp. Petition for Rulemaking)	RM-10593
To Reform Regulation of Incumbent)	
Local Exchange Carrier Rates for)	
Interstate Special Access Services)	

DECLARATION OF MICHAEL JEWELL

Comes now the declarant, and swears under oath as follows:

1. This Declaration is being filed to demonstrate the competitive challenges Embarq faces in its serving areas. Embarq is a communications company providing a suite of retail and wholesale communication services, including special access services, to its customers in its serving areas across 18 states. Embarq is headquartered in Overland Park, Kansas.

2. My career with Embarq began in 1985 with its predecessor companies United Telecommunications and Sprint. Since 2005, I have been the Director – Wholesale Sales responsible for sales to interexchange carriers such as AT&T. I also have responsibility for sales to wireless carriers and internet service providers. Listed below are the various positions I have held at EMBARQ and its predecessor companies:

Director – Wholesale Sales	2005 to Present
Director – Regional Sales	2004
Director – Carrier Sales	2001 to 2003
Director – Public Access	1999 to 2000

Director – Product Development	1998
Director – Competitive Markets	1996 to 1997
Manager – Strategic Planning	1995
Manager – Price / Cost Strategy	1992 to 1994
Other Regulatory Positions	1985 to 1991

3. Embarq's Special Access Services are dedicated circuits connecting to customer premises and carrier points of presence. The vast majority of EMBARQ's sales of dedicated access circuits are made through our interstate special access tariffs.

4. Increasingly, Embarq loses special access business to competing carriers that either own their own facilities or lease those facilities from some third party other than Embarq. Competitors rarely share their sales successes directly with Embarq, however based on information from customers, the following opportunities (spread across Embarq and consisting of both very large and very small opportunities) are some of the business that Embarq lost during the last two years:

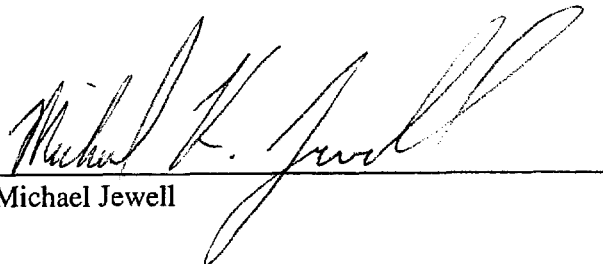
Las Vegas			
Wireless Carrier	OC48	Cox	2006
Wireless Carrier	OC48	Cox	2006
Wireline Carrier	OC48 entrance facility	Built own facilities	2006
Wireline Carrier	OC48 and OC12	XO Communications	12/2006
Wireline Carrier	OC12	Cox	1/2007
Wireless Carrier	OC48	XO Communications	6/2007
Wireless Carrier	DS3s (2)	XO Communications	7/2007
Orlando, FL			
Wireless Carrier	OC12	Level 3	5/2007
Wireless Carrier	DS3s (4)	TimeWarner,	2006

Carrier/Hubband Requested Opportunity To	Service	Carrier Lost Opportunity To	Date of Loss
		Florida Power	
Wireless Carrier	OC48	Florida Power	5/2007
Fayetteville, NC			
Wireline Carrier	OC192	Time Warner	12/2006
Bristol, TN; Johnson City, TN; Kingsport, TN			
Wireless Carrier	DS3 hub	Level 3	6/2007
Wireline Carrier	DS3s (35)	Level 3	5/2007
Ohio			
Wireline Carrier	OC12	Citynet	2006
Wireline Carrier	OC12	Citynet	2006

5. Total monthly recurring revenue from these lost opportunities exceeds \$346,000.

6. This concludes my Declaration.

I, Michael Jewell, hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information, and belief.


Michael Jewell

Dated: August 7, 2007

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October 19, 2007*

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DISCLOSURE PERMITTED**

ATTACHMENT D

COMPETITIVE RISK ASSESSMENT

REDACTED FOR PUBLIC DISCLOSURE

REDACTED VERSION - PUBLIC DISCLOSURE PERMITT

Barq Wholesale Competitive Risk Analysis by DS1 Equivalent
ed on 6/1/2007 Revenue History

State	Wire centers	Total Special Access DS1 Equivalents	Wire centers with at least one collocated competitor (wholesale)	Special Access Lines with Collocated Competitor (wholesale) in Wire center	% special access lines at risk by collocator	Wire centers with Cable competitor (wholesale)	Special Access Lines with Cable Competitor (wholesale) in Wire center	% Special Access lines at risk by cable	Wire centers with both competitors	Special Access lines with both	% Special access lines at risk by both	Total Wire Centers at Risk	Total Special Access Lines at Risk	% Special Access Lines at Risk
	169													
	93													
	108													
	47													
	81													
	240													
	14													
	31													
	44													
	184													
	31													
	94													
	20													
	27													
	114													
	88													
	34													
	4													
AL	1423													

REDACTED VERSION - PUBLIC DISCLOSURE PERMIT

Barq Wholesale Competitive Risk Analysis by DS1 Equivalent
 based on 6/1/2007 Revenue History

MSA	Wire centers	Total Special Access DS1 Equivalents	Wire centers with at least one collocated competitor (wholesale)	Special Access Lines with Collocated Competitor (wholesale) in Wire center	% special access lines at risk by collocator	Wire centers with Cable competitor (wholesale)	Special Access Lines with Cable Competitor (wholesale) in Wire center	% Special Access lines at risk by cable	Wire centers with both competitors	Special Access lines with both	% Special access lines at risk by both	Total Wire Centers at Risk	Total Special Access Lines at Risk	% Special Access Lines at Risk
Charlottesville, VA	6													
Dallas, TX	18													
Fayetteville, NC	11													
Fort Myers--Cape Cor	24													
Fort Walton Beach, F	9													
Greenville, NC	12													
Harrisburg--Lebanon-	10													
Rocky--Morganton,	12													
Johnson City--Kingsp	28													
Las Vegas, NV--AZ	42													
Columbus, OH	10													
Windsor, OH	17													
Middlesex--Somerset-	13													
Orlando, FL	10													
Orlando, FL	30													
Pittsburgh, PA	13													
Rocky Mount, NC	11													
Tallahassee, FL	13													
York, PA	1													
Total	290													

REDACTED VERSION - PUBLIC DISCLOSURE PERMITTED

Price Flex Risk vs. Total Lines

	Total Special Access Lines on DS1e	Special Access Lines in Price Flex on DS1e	Percentage of Special Access Lines in Price Flex Areas
Total Lines	-	-	
Risk from Colo	-	-	
Risk from Cable	-	-	
Risk from Both	-	-	
Risk from Either	-	-	

Percentage of At Risk Lines in Price Flex Areas